

1  
2  
3  
4  
5  
6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 IN RE PORTFOLIO RECOVERY  
10 ASSOCIATES, LLC, TELEPHONE  
11 CONSUMER PROTECTION ACT  
12 LITIGATION

No. 11-md-02295-JAH-BGS

Member cases:  
All member cases

Hon. John A. Houston

13 **ORDER GRANTING**  
14 **PRELIMINARY APPROVAL OF**  
**CLASS ACTION SETTLEMENT**

15 Plaintiffs Plaintiffs Jeremy Frydman, John Howard, Sam Marin, Jesse Meyer,  
16 Fred Jury, and Danny Allen (collectively, "Plaintiffs") have filed a Motion for  
17 Preliminary Approval of Class Action Settlement and Certification of Settlement  
18 Class (hereinafter referred to as the "Preliminary Approval Motion") in the above-  
19 captioned action (the "Lawsuit"). The Preliminary Approval Motion is unopposed  
20 by Defendants Portfolio Recovery Associates, LLC, and PRA Group, Inc. f/k/a  
21 Portfolio Recovery Associates, Inc. (collectively, "PRA"). The Court has read and  
22 considered the Settlement Agreement (the "Agreement"), the Preliminary Approval  
23 Motion, and the record in this case. The capitalized terms used in this Preliminary  
24 Approval Order have the same meaning as defined in the Agreement.  
25  
26  
27  
28

1 NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND  
2 DECREED THAT:

3  
4 I. JURISDICTION: The Court has jurisdiction over the subject matter of the  
5 Lawsuit and over all settling parties hereto.

6  
7 II. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT: The Court  
8 preliminarily finds that the settlement of the Action, on the terms and conditions set  
9 forth in the Agreement and the exhibits thereto, is in all respects fundamentally fair,  
10 reasonable, adequate and in the best interests of the Class Members, taking into  
11 consideration the benefits to Class Members; the strength and weaknesses of  
12 Plaintiffs' case; the complexity, expense and probable duration of further litigation;  
13 and the risk and delay inherent in possible appeals. The Court finds that Notice of  
14 the Agreement should be given to persons in the Class and a full hearing should be  
15 held on approval of the Agreement. The provisions of the Agreement are  
16 preliminarily approved and the Parties shall comply with its terms. All objections to  
17 the preliminary approval of the Settlement are overruled.

18  
19  
20  
21 III. SETTLEMENT ADMINISTRATOR: The Court approves the selection of  
22 KCC, LLC to be the Settlement Administrator. The Settlement Administrator will  
23 administer the applicable provisions of the Agreement in accordance with the terms  
24 of the Agreement, including, but not limited to, distributing and providing the class  
25 Notice, receiving and examining Claims, calculating claims against the \$18,000,000  
26 Settlement Fund, preparing and executing all disbursements of the Settlement Fund  
27  
28

1 to Settlement Class Members whose Claims are approved, and handling inquiries  
2 about the calculation of the individual settlement amounts. All reasonable fees and  
3 costs of the Settlement Administrator shall be deducted from the Settlement Fund,  
4 and shall not be paid separately by PRA (apart from the creation of the Settlement  
5 Fund).  
6

7  
8 IV. CAFA COMPLIANCE: In compliance with the Class Action Fairness Act, 28  
9 U.S.C. § 1715, and as set forth in the Agreement, the Settlement Administrator is  
10 ordered to serve written notice of the proposed settlement on the U.S. Attorney  
11 General and the appropriate state official of each state, unless such notice has  
12 already been served.  
13

14 V. CLASS MEMBERS: Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is  
15 hereby preliminarily and conditionally certified, for settlement purposes only,  
16 as a class action on behalf of the following class members:  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 All natural persons residing in the United States who received one or  
2 more telephone calls from an autodialer or a predictive dialer operated  
3 by Defendants to such person's cellular telephone number between  
4 December 23, 2006 and July 1, 2013, inclusive, and who are listed in  
5 the csv data file titled pra\_outbound\_dial\_list\_20140304.zip produced  
6 to Plaintiffs' counsel.  
7

8  
9 Excluded from the Class are the Judges to whom the Action is assigned and any  
10 member of the Judges' staffs and immediate families, as well as all persons who  
11 validly request exclusion from the Settlement Class.  
12

13 VI. CLASS REPRESENTATIVES AND CLASS COUNSEL APPOINTMENT:  
14

15 The Court appoints Plaintiffs as the Class Representatives, Ethan Preston and  
16 Preston Law Offices and James O. Lattuner and Edelman, Combs, Lattuner &  
17 Goodwin, LLC as Class Counsel, and the Law Offices of Douglas J. Campion,  
18 APC, as Liaison Counsel.  
19

20 VII. NOTICE AND CLAIMS PROCESS: The Court approves the claims process  
21 as set forth in the Agreement. All claims must be submitted, or postmarked if  
22 mailed, no later than forty (40) days prior to the Final Hearing (*i.e.*, the deadline is  
23 currently October 26, 2016). The Court approves the form, content and method of  
24 notice as set forth in the Agreement. As further set forth in the Agreement, no later  
25 than thirty (30) days from the date of this order, the Settlement Administrator shall  
26  
27  
28

1 (A) establish a settlement website containing appropriate Notice of the Settlement  
2 and (B) promulgate publication Notice as set forth in the Agreement. As set forth in  
3 the Agreement, no later than forty-five (45) days from the date of this order (but  
4 after the foregoing website is accessible to Class members), or by such time as is  
5 reasonably necessary, the Settlement Administrator shall complete sending Notice  
6 in post card format to each Class Member at his or her last known valid address.  
7  
8 The Settlement Administrator will use a National Change of Address database to  
9 identify and update any outdated addresses in the data file containing the Class  
10 members, as set forth in the Agreement. Any Notices that are returned as non-  
11 deliverable with a forwarding address shall promptly be re-mailed by the Settlement  
12 Administrator to such forwarding address. The publication notice via online text  
13 and banner ads and comparable advertising venues shall continue until at least 30  
14 days prior to the Final Hearing, or for such time and in such manner as the  
15 Settlement Administrator deems is necessary and proper for such publication  
16 notice, as set forth in the Agreement. No later than ten (10) business days prior to  
17 the Final Hearing (*i.e.*, the deadline is currently November 21, 2016), the  
18 Settlement Administrator shall file with the Court a declaration attesting that it  
19 provided the Notice required by this Order and the Agreement.

20  
21 The Court finds that the form, content, and method of Notice set forth in the  
22 Agreement constitute the best practicable notice under the circumstances, are  
23 reasonably calculated to apprise the Class Members of the pendency of this action

1 and the terms of the proposed settlement, and satisfy the due process requirements  
 2 of the Constitution of the United States, Rule 23(c)(2) of the Federal Rules of Civil  
 3 Procedure, and any other applicable laws.  
 4

5 VIII. SETTLEMENT FUND AND PLAINTIFFS' INCENTIVE PAYMENTS: The  
 6 Court preliminarily approves the \$18,000,000 Settlement Fund as a fair, reasonable  
 7 and adequate settlement of Plaintiffs' claims on behalf of the Class Members. The  
 8 Court also preliminarily approves the incentive payments that will be sought by  
 9 Plaintiffs to be paid from the Settlement Fund.  
 10

11 IX. CLASS CERTIFICATION: The Court preliminarily finds that, for settlement  
 12 purposes only, the Class satisfies the requirements of Rule 23 of the Federal Rules  
 13 of Civil Procedure.  
 14

15 X. EXCLUSIONS: Any Class Member may request to be excluded from the  
 16 Class by mailing a letter or other writing containing that request. The Request for  
 17 Exclusion should be sent by first class mail to the Settlement Administrator and  
 18 contain the Class Member's full name, address, telephone number, and e-mail  
 19 address if available. The Request for Exclusion shall be postmarked no fewer than  
 20 thirty (30) days prior to the Final Hearing (*i.e.*, the deadline is currently November  
 21 4, 2016). The Settlement Administrator shall provide a list of only the names of  
 22 each Class Member who submitted a valid Request for Exclusion to the parties'  
 23 counsel no later than fifteen (15) days prior to the Final Hearing (*i.e.*, the deadline  
 24 is currently November 20, 2016). All updated identifying information may be  
 25  
 26  
 27  
 28

1 provided to Plaintiffs' counsel upon request but not to defense counsel, as per the  
2 Agreement.

3  
4 XI. OBJECTIONS TO THE AGREEMENT: Any Class Member may object to  
5 the terms of the Agreement, including, but not limited to, the benefits to be paid to  
6 the Class under the Agreement, Class Counsel's application for attorneys' fees and  
7 litigation expenses, and the Class Representatives' service payments by filing a  
8 written objection with the Court no later than thirty (30) days prior to the Final  
9 Hearing (*i.e.*, the deadline is currently November 4, 2016). Objections are deemed  
10 filed on the date when the Court receives them. Copies of any objections must be  
11 mailed to Class Counsel and PRA's counsel at the time they are filed with the  
12 Court. The written objection must include the Class Member's name, address,  
13 telephone number, e-mail address (if available), the reason for the objection,  
14 whether the objector intends to appear at the Final Hearing, and if so, whether they  
15 will appear pro se or through counsel, and list all cases in which the Class Member  
16 has made any objection to a class action settlement in the last five years. The  
17 objection must include any evidence supporting the objection. Any Class Member  
18 who does not file a valid and timely objection to the settlement shall be barred from  
19 seeking review of the settlement by appeal or otherwise.

20  
21 XII. MOTION FOR PLAINTIFFS' INCENTIVE AWARDS AND AWARD OF  
22 ATTORNEYS' FEES AND COSTS: Class Counsel shall move for approval of (A)  
23 Plaintiffs' incentive awards and (B) an award for attorneys' fees and expenses no  
24

1 later than sixty (60) days before the Final Hearing (*i.e.*, the deadline is currently  
2 October 6, 2016). Class Counsel may file any supplemental brief in support of such  
3 motions and any brief in opposition or response to any objection) no later than  
4 seven (7) days prior to the Final Hearing (*i.e.*, the deadline is currently November  
5 28, 2016). The motion for final approval of incentive awards and motion for  
6 attorneys' fees shall be posted on the website of the Claims Administrator so that  
7 they may be reviewed by any member of the Class or any other person.  
8

9  
10 XIII. FINAL APPROVAL MOTION: Class Counsel shall file a motion for final  
11 approval of settlement no later than sixty (60) days before the Final Hearing (*i.e.*,  
12 the deadline is currently October 6, 2016). Class Counsel may file any  
13 supplemental brief in support of such final approval motions and any brief in  
14 opposition or response to any objection no later than seven (7) days prior to the  
15 Final Hearing (*i.e.*, the deadline is currently November 28, 2016).  
16

17  
18 XIV. FINAL HEARING: The Court shall conduct a hearing (the "Final Hearing")  
19 on **December 5, 2016, at 2:30 p.m.**, in Courtroom 13B of the United States District  
20 Court for the Southern District of California, 333 West Broadway, San Diego,  
21 California, 92101. The Final Hearing may be rescheduled or continued by the Court  
22 without further notice to the Class Members. At the hearing, the Court will  
23 consider the following issues: (A) Whether this action satisfies the applicable  
24 prerequisites for class action treatment for settlement purposes under Fed. R. Civ. P.  
25 23; (B) Whether the proposed settlement is fundamentally fair, reasonable,  
26  
27  
28



adequate, and in the best interest of the Class Members and should be approved by the Court; (C) Whether the order granting final approval of class action settlement and judgment, as provided under the Agreement, should be entered, dismissing the Lawsuit with prejudice and releasing the Released Claims against the Released Parties; and (D) Such other issues as the Court deems appropriate. Class Members need not appear at the hearing or take any other action to indicate their approval of the proposed class action Settlement Agreement. However, Class Members wishing to be heard are required to submit a notice of intention to appear at the Final Hearing.

XV. STAY ON FURTHER ACTIONS AGAINST PRA: Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Agreement, no Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against the Released Parties. If the Agreement is not finally approved for any reason, then this order shall be vacated, the Agreement shall have no force and

//

//

//

//

//

1 effect, and the Parties' rights and defenses shall be restored, without prejudice, to  
2 their respective positions as if the Agreement had never been executed and this  
3 order never entered.  
4

5 IT IS SO ORDERED.

6 Dated: June 23, 2016

7   
8 THE HONORABLE JOHN A. HOUSTON  
9 UNITED STATES DISTRICT COURT JUDGE  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28